IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 1317 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.PARIKH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : YES

IDRISMIYA MUKHATYAR AHMED SAIYED

Versus

LALPATRAM HARIRAM MEHTA

Appearance:

MR VC DESAI for Petitioner

NOTICE SERVED for Respondent No. 1

for Respondent No. 2

CORAM : MR.JUSTICE M.S.PARIKH

Date of decision: 25/02/2000

ORAL JUDGEMENT

1. This acquittal appeal moved by the complainant with leave arises from the impugned judgment and order of acquittal rendered by the Ld. Judicial Magistrate First

Class, Kapadvanj in Criminal Case No. 463 of 1977 on 6/12/1985.

It was the prosecution that that at about 10.45 a.m. on 1/11/1976 the accused Lajpatray Hariram Mehta was present at the shop in the name and style of 'Mehta Kirana Stores', Antisar Gate, Kapadvanj and was carrying on business in grocery. The complainant purchased from the accused 600 grams of coriander powder (Dhania powder) from the stock of 8 Kgs. of coriander powder kept by the accused. Such purchase was made at the rate of Rs.9/per Kg. and payment of Rs.5.40 ps. was made against cash memo for that amount. The complainant thereafter separated the powder into three lots of 200 grams each and collected these three lots in three empty bottles duly cleaned. The bottles were closed and sealed in the presence of the accused and the Panch witnesses. They were labelled under the signatures of the Panch witnesses and the accused. One sample was sent to the Public Analyst for examination under a written notice to the accused. The complainant attended to the required formalities of noting identification nos./code nos. on each of the bottles so sealed. Remaining two bottles were sent to the Local Health Authority, District Kheda on 2/11/1976. Upon receipt of report from the Public Analyst (report no. 2263 dated 17/11/1976) it was found that the proportion of ash and ash insoluble was more than the required standard. Hence, the complaint was lodged u/S. 2 (a) read with section 7 (1) of the Prevention of Food Adulteration Act, 1954 (for short 'the Act'). In reply to the charge framed against the accused, he pleaded not guilty to the same. At the conclusion of the trial Ld. Magistrate rendered acquittal of the accused on number of grounds. He held that there was breach of rule 15 of the Prevention of Food Adulteration Rules, 1955 (for short 'the Rules') in asmuch as it was not established by the prosecution beyond reasonable doubt that label with required form as per rule 15 was affixed on the sample bottles. He has also held that there was breach of rule 16 (c) in asmuch as the prosecution did not specify in the complaint the fact with regard to mentioning of particulars regarding code no. and signature of the accused contained in the slip affixed on the samples and that there was no specification about seal of the designation of the complainant having surfaced in the Panchnama exh. 35 in complaint exh. 1. He has also held that there is breach of rules 17 and 18 of the Rules in asmuch as it has not appeared in the evidence as to by what mode the sample was sent to the Public Analyst. The Ld. Magistrate has also held that there is breach of section 11 (1) (c) (1)

of the Act in asmuch as the complainant has failed to prove that required intimation was sent to the local authority. In view of such findings, the Ld. Magistrate has come to the conclusion that the prosecution failed to establish beyond reasonable doubt the charge against the accused as arising from the report of the Public Analyst.

2. When this appeal came up for final hearing before this Court, Mr. V.C. Desai, learned advocate appearing for the appellant (original complainant) did try to show from the record of the proceedings before the Ld. Magistrate that there is in fact no violation of the relevant rules spoken to by the Ld. Magistrate. He had drawn the attention of this Court to the report of the Public Analyst appearing at exh. 41, evidence of the Food Inspector exh. 31 and the Panchnama exh. 35. Mr. Desai also tried to show to this Court from the aforesaid pieces of evidence how the conclusions drawn by the Ld. Magistrate are factually not correct upon appreciation of the said evidence. However, Mr. Modi, learned advocate, who at the request of the Court, has rendered legal assistance to the accused who has been serned with the notice of this Court, but who has not entered appearance either personally or through any advocate, drew the attention of this Court to the statement of the accused u/S. 313 of the Criminal Procedure Code, 1973 (for short 'the Code') and submitted that no conviction could be based on the basis of the report of Public Analyst as the same has not been put to the accused in his statement u/S. 313 of the Code of Criminal Procedure (for short 'the Code'). According to submission of Mr. Modi resultant prejudice to the accused would be on the face of the record. In order to appreciate the submissions made on behalf of the rival parties on the aforesaid limited question it would be necessary to look to the statement of the accused recorded u/S. 313 of the Code. It appears at exh. 51. He has been asked only one question and that would read as under :-

Translated into English the question would read :

What have you to say about the evidence of Food Inspector Idrismiya exh. 31 ?

The accused has replied that the evidence is false. It would clearly appear from the aforesaid one question record of statement u/S. 313 of the Code that the Ld. Magistrate has not put report of the Public Analyst to the accused for being explained and it is apparent on the face of the record that the accused stood charged for having violated the provisions of sections 2 (a) and 7(1) only on the basis of the report of Public Analyst. This

is apart from the fact that the circumstances flowing from the report of the Public Analyst as well as from the evidence of the Food Inspector exh. 31 have also not been placed to the accused. It is from the aforesaid nature of the examination of the accused u/S. 313 of the Code, that reference has been made to a decision of the Apex Court in the case of Ajmer Singh v. State of Punjab reported in AIR 1953 S.C. 76 where the Apex Court has observed that it is not sufficient compliance with the section to generally ask the accused that having heard the prosecution evidence what he has to say about it and that the accused must be questioned separately about each material circumstance which is intended to be used against him. The Apex Court has referred to Tara Singh v. The State, 1951 SCR 729 pointing at the very object of the provision is to afford the accused a fair and proper opportunity of explaining circumstances which appear against him and that the questions must be fair and must be couched in a form which an ignorant or illiterate person will be able to appreciate and understand. A learned Single Judge of this Court had an occasion to deal with the scope of examination of the accused u/S. 313 of the Code in the case of K.V. Zala v. State reported in 1993 (1) G.L.R. 288. Reference has been made to Ajmer Singh's case in the first instance. Tracing the precedent of the Apex Court this Court had an occasion to observe that all important material or incriminating circumstances have to be put to the accused in his examination u/S. 313 of the Code in appropriate and simple language so that the accused could be afforded with the opportunity to explain the same and in case of non-compliance of the said provision, the circumstances and incriminating material not put to the accused will have to be totally excluded from consideration. If that is so in the absence of explanation of the accused having been sought for in respect of the report of the Public Analyst which is the very basis of charge against the accused, he cannot be convicted. Reference has further been made to a Bench decision of this Court in the case of Balu Ramu v. State reported in 1985 (2) G.L.R. 933 where in para. 12 the Bench has observed that the incriminating circumstance which has not been put to the accused in his statement u/S. 313 of the Code cannot be used against him. Finally reference has been made to a Bench decision of this Court in the case of Surendraprasad v. State of Gujarat reported in 1980 Cri. L.J. 1016, where this Court had an occasion to make following observations in para. 43 :-

"43. The Presiding Judges while examining the

accused persons under Section 313 of the Cr.P.C. must be on caution to see, that each and every circumstance appearing against the accused from the prosecution evidence must be separately and distinctly put to the accused so as to enable the accused to explain the said circumstance. If the questions put to the accused are unusually longish and take in their sweep a number of circumstances appearing against the accused from the prosecution evidence, the possibility of the accused being misguided cannot be ruled out, though the same may not cause any serious prejudice or any prejudice to the accused. This statutorily prescribed obligation on the part of the learned Judges conducting the trials must be scrupulously discharged, otherwise, the accused may innocently give false answers to the questions put to him by, the learned Presiding Judges or he may not be ableto give any answer to the questions put by the Presiding Judge. This part of the trial is of utmost importance, and if as a result of any inadvertence or on account of undue haste on the part of the learned Judges in the zeal of conpleting the trial soon, if the examination of the accused under Section 313 of the Code of Criminal Procedure is not properly done in its true and fair spirit, the possibility of the trial Court doing injustice cannot be ruled out."

3. Mr. Desai, learned advocate appearing for the complainant drew the attention of this Court to the decision of the Apex Court in the case of Ganeshmal Jashraj v. Government of Gujarat reported in AIR 1980 S.C. 264 while submitting that the matter may be remanded to the trial Court for recording of the statement of the accused u/S. 313 of the Code while pointing out to him all the circumstances appearing from the prosecution evidence including report of the Public Analyst and directing the trial Court to decide the matter afresh after considering such statement. In that case the accused was charged before the Ld. Magistrate for the offence punishable u/S. 16 (1) (a) (i) of the Act for selling adulterated turmeric powder. The prosecution closed its case and thereafter the appellant was examined by the Ld. Magistrate u/S. 313 of the Code and on the same day as a result of plea bargaining the Ld. Magistrate proceeded to make order convicting the accused and sentencing him to suffer simple imprisonment

till rising of the Court and also to pay fine of Rs.300/-, in deafult to suffer further R.I. for one month. Through an annonimous application, this Court had come to know about such a course adopted by the Ld. Magistrate, and it, therefore, exercised suo-motu revisional jurisdiction and enhanced the sentence to three months simple imprisonment and fine to Rs.500/-. The matter was carried to the Apex Court who had an occasion to make following observations :-

> "There can be no doubt that when there is an admission of guilt made by the accused as a result of plea bargaining or otherwise, the evaluation of the evidence by the Court is likely to become a little superficial and perfunctory and the Court may be disposed to refer to the evidence not critically with a view to assessing its credibility but mechanically as a matter of formality in support of the admission of guilt. The entire approach of the Court to the assessment of the evidence would be likely to be different when there is an admission of guilt by the accused. Here it is obvious that the approach of the learned Judicial Magistrate was affected by the admission of guilt made by the appellant and in the circumstances, it would not be right to sustain the conviction of the appellant."

In the result the Apex Court allowed the appeal and set aside the order of enhancement of sentence rendered by this Court and the order passed by the Magistrate convicting the accused and remanded the case to the Ld. Judicial Magistrate so that he might proceed further from the stage of examination u/S. 313 of the Code and dispose of the case on the basis of the evidence led on behalf of the prosecution. Following parting observations would also need consideration while dealing with the request of the learned advocate for the complainant/appellant :-

> "Before we part with this case, we must regretfully observe, and this was not disputed by the learned counsel appearing on behalf of the State, that most of the cases of food adulteration which come to the Courts are cases directed against small tradesmen such as grocers, milk-vendors, etc. It is common knowledge that these small tradesmen purchase the food stuff sold by them from the wholesalers and sometimes even directly from the manufacturers and more

often than not the adulteration is made either by the wholesalers or by the manufacturers. Ordinarily it is not the small retailers who adulterate the articles of food sold by them. Yet it is only the small retailers who are caught by the food inspectors and the investigative machinery of the food department does not for some curious and inexplicable reason turn its attention to the wholesalers and manufacturers. The small tradesmen who eke out a precarious existence living almost from hand to mouth are sent to jail for selling food stuff which is often enough not adulterated by them and the wholesalers and manufacturers who really adulterate the food stuff and fatten themselves on the misery of others escape the arm of the law. The Food Inspection Department prides itself on its statistics by catching small tradesmen and by its gross indifference and inaction, allows wholesalers and manufacturers to carry on their nefarious activities, untouched and unaffected by the penal law. The result is that a wrong impression is being created on the public mind that the law is being properly enforced, whereas in fact what is really happening is that it is only the small tradesmen who are quite often not themselves responsible for adulteration who are caught and sent to jail while there is no effective enforcement of the law against the real adulterators. This is a failing which we notice in the implementation of many of our laws. It is only the smaller flies which get caught in the web of these laws while the bigger ones escape. This syndrome of soft justice to big economic criminals and harsh justice to the humbler offendors is a systemic weakness which affects the credibility of the rule of law itself. It is no wonder that an anonymous poet sardonically said while projecting the social dimension of this systemic deficiency:

The law looks up both
man and woman,
Who steals the goose
from off the common,
But lets the greater
felon loose,
Who steals the common
from the goose."

While dealing with the request of the learned advocate for the complainant, it could be noticed that the accused is not charged with such adulteration as could be said to be unfit for human consumption. That apart, Mr. Modi made reference to a decision of the Apex Court in the case of State of Maharashtra v. Gopalprasad Govindprasad Agarwal and others reported in 1998 (9) S.C.C. 274 for submitting that no fruitful purpose will be served by remanding matter after passage of 20 years particularly when alleged adulteration is only pertaining to some prescribed standards and not one as would adversely affect human health. In the present case the offence charged against the accused is relatable to a transaction in the year 1977. More than 20 years have passed. In view of the nature of adulteration reflected by the report of public analyst, it would be futile to remand the matter to the trial Court. Following observations made in a case under the relevant provisions of the Act by the Apex Court in Gopalprasad's case (supra) would accordingly assume importance :-

"Ordinarily, after recording the above findings we are required to set aside the impugned acquittal and remand the matter for disposal of the appeals on their merits but having regard to the fact that since the offences were allegedly committed almost 20 years have elapsed we do not feel inclined to take such a course of action. We, therefore, dismiss the appeals with the above observations."

In the result, although at the ultimate conclusion of the trial after recording of the statement of the acused u/S. 313 of the Code the prosecution might get through if the matter is remanded, bearing in mind the passage of time and the nature of adulteration as flowing from the report of the Public Analyst and also bearing in mind the fact that the accused happened to be a small retailer in grocery, it would not be just and proper to remand the matter to the trial Court. This appeal is accordingly dismissed.

* * *

PVR.